



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/803,284

03/18/2004

Leonard Reiffel

BANG2 CON

5642

7590

08/25/2004

William J. Hallihan, Esq.
HALLIHAN Intellectual Property Law, Ltd.
Suite 2080
125 South Wacker Drive
Chicago, IL 60606

EXAMINER

LEE, DIANE I

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,284

Applicant(s)

REIFFEL, LEONARD

Examiner

D. I. Lee

Art Unit

2876

h

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/10/4</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. Claims 1-8 are presented for examination.
2. Acknowledgment is made that this application is a continuation of US patent application Serial No. 10/258,402 filed 23 October 2002 (now U.S. Patent No. 6,708,885) under 35 USC 371 from PCT patent application PCT/US01/13742 filed 30 April 2001 which claims benefit of US provisional application 60/201,471 filed 03 May 2000 and US provisional application 60/256,086 filed 15 December 2000.

Priority

3. Although applicant filed this application is a continuation of US patent application Serial No. 10/258,402 filed 23 October 2002 (now U.S. Patent No. 6,708,885), upon review of the parent applications Serial Nos. 10/258,402, the examiner has determined that the currently claimed invention has not been "wholly" disclosed until instant application (i.e., applications Serial No. 10/803,284 filed 18 March 2004). Specifically, the subject matters in claims 2-4 and 6-8. Therefore, **the effective filing date for the currently claimed invention is 18 March 2004.**

This application repeats a substantial portion of prior Application No. 10/258,402, filed 4/30/01, and adds and claims additional disclosure not presented in the prior application (i.e., the subject matters in claims 2-4 and 6-8). Since this application names an inventor or inventors named in the prior application, it may constitute a continuation-in-part of the prior application. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following feature(s) must be shown or the feature(s) canceled from the claim(s):

(a) react mode is a directional antenna (see claims 2-4 and 6-8).

No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Double Patenting

5. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894);

Art Unit: 2876

In re Ockert, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

6. Claims 1 and 5 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 and 11 of prior U.S. Patent No. 6,708,885. This is a double patenting rejection.

7. Claims 2-4 and 6-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 and 11-18 of U.S. Patent No. 6,708,885 (referred as Patent'885) in view of Richley [US 6,542,083], Schrottet [US 6,335,685], or McMahon [US 5,789,732].

Although the conflicting claims are not identical, they are not patentably distinct from each other.

In claim 1 for example, the code light from the code region represent the code and the code light is selected, detected by the react mode of the imager when the locate mode matches the preset value and the detected locate light. The code light in claim 1 provides an identification of the code in the code region to be selected, detected by the react mode. The locate mode of the imager detects the locate light from the locator and causes the react mode to select, detect code light when the locate mode matches the preset value and the detected locate light. The react mode and locate mode of the imager in claim 1 provides the function of optically locating the field of view or target and activating function. This teaching of the code light from the code region represent the code and the code light is selected, detected by the react mode of the imager when the locate mode matches the preset value and the detected locate

Art Unit: 2876

light is identically taught by Patent'885 in claim 1. The characteristic of the code light from the code region represent the code in claim 1 is interpreted as an optical or light information (optical property or light property) that identifies the code in the code region, and further locate mode and react mode of the imager in claim 1 is interpreted as an optical or light locating and activating means.

Patent'885 fails to teach the code light is in a radio frequency portion of an electromagnetic radiation spectrum and the react mode is a directional antenna.

Richley teaches the code light (tag) having code identification in a radio frequency portion of an electromagnetic pulse of radiation spectrum a directional antenna 17 directed, pointed electronically (using an embedded antenna grid 40) at the tag region by spatial movement for locating the target (see col. 4, lines 16+; col. 5, lines 5+; and figure 1).

McMahon discloses the device having an optical communication, i.e., the use of optical technology, and RF Wireless communication using a radio frequency link similar to the optical method as another form of communication. The difference is the use of electromagnetic energy in the RF spectrum as opposed to the optical spectrum operation (col. 4, lines 50+).

Schrotte teaches a system with a wireless tag (i.e., an RF tag) attached to the object and a locator (a position detector) that determines the position of the one or more of the tags within a field of the view of the base station. The system captures the data on the tag and determines the position of the respective tag. The system uses a directional antenna 104 pointed at the target region for locating the target in the field of view (see figure 1).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate other known technology of identifying and locating the target as taught by Richley, Schrottet, or McMahon in the imager of Patent'885 in order to provide an active or combination of passive/active system for obtaining the code identification and locating of the target.

Art Unit: 2876

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lake et al. [US 5,260,556] discloses a target provided with coded data retro reflector readable by an imaging means and a location marking that enable location of the target by the imaging apparatus.

Wiklof et al. [US 6,056,199] and Koenck et al. [US 5,825,045] discloses a scanner having a locating mean to detect the tag with reflected portion of the light beam that represents the code.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. I. Lee whose telephone number is (571) 272-2399. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. I. Lee
Primary Examiner
Art Unit 2876

D. L.